

# **ORIGINAL**

DOCKET FILE COPY ORIGINAL

RECEIVED

May 1, 1998

MAY 1 - 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

#### **BY HAND DELIVERY**

Magalie Roman Salas, Esq. Secretary Federal Communications Commission 1919 M Street, N.W., Room 222 Washington, D.C. 20554

Re:

Comments of Ursus Telecom Corporation in Support of

Petition for Rulemaking; RM-9249

Dear Secretary Salas:

Transmitted herewith on behalf of Ursus Telecom Corporation, please find an original plus four (4) copies of the "COMMENTS OF URSUS TELECOM CORPORATION IN SUPPORT OF PETITION FOR RULEMAKING" to be filed in the above-referenced proceeding.

Please date-stamp the enclosed extra copy of this filing and return it with the messenger to acknowledge receipt by the Commission.

If you have any questions regarding this submission, please do not hesitate to contact me.

Very truly yours,

What Must Helen E. Disenhaus

Adam L. Kupetsky

Enclosures

cc:

Troy Tanner

Susan O'Connell Charles C. Hunter Douglas D. Orvis

236904.1

ORIGINAL

# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Rulemaking Of The	)	RM -9249
Telecommunications Resellers Association	)	
To Eliminate Comity-Based Enforcement Of	)	
Other Nations' Prohibitions Against The	)	
Uncompleted Call Signaling Configuration	)	
Of International Call-Back Service	)	
	)	
	)	

# COMMENTS OF URSUS TELECOM CORPORATION IN SUPPORT OF PETITION FOR RULEMAKING

Ursus Telecom Corporation ("Ursus"), which is authorized by the Commission under Section 214 to provide resale and facilities-based international telecommunications services, by its counsel and pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. § 1.405 (1997), hereby submits these comments in support of the Petition for Rulemaking of the Telecommunications Resellers Association ("TRA")<sup>1</sup> to end the Commission's comity-based policy of enforcing foreign laws that prohibit the provision of call-back service using uncompleted call signaling ("UCS"). Ursus urges the Commission to announce unambiguously that it will not take any further enforcement action under this policy.

#### I. Introduction

The Commission's fundamental international telecommunications policy objective is to

Petition for Rulemaking of The Telecommunications Resellers Association To Eliminate Comity-Based Enforcement of Other Nations' Prohibitions Against Uncompleted Call Signaling Configuration of International Call-Back Service, RM-9249 (Filed March 19, 1998).

promote competition worldwide so as to ensure that the public receives high-quality telecommunications services at reasonable prices. To help achieve this policy objective, the Commission has supported and encouraged international call-back.<sup>2</sup> However, the Commission has also limited the pro-competitive impact of international call-back by agreeing to assist foreign governments in enforcing laws that prohibit the provision of call-back using UCS. The Commission will help to enforce a foreign call-back prohibition if a foreign regulator identifies for the Commission explicit statutory or regulatory measures that prohibit call-back using UCS if certain conditions have been satisfied.<sup>3</sup> While recognizing that such foreign laws were inconsistent with the Commission's pro-competitive policies, the Commission determined that promoting international comity warranted the departure from its general regulatory policy.

### II. Summary of Conclusions

Significantly, however, since the FCC adopted its call-back policy, the U.S. and many of its trading partners acceded to the World Trade Organization ("WTO") Agreement on Basic

<sup>&</sup>lt;sup>2</sup> VIA USA Ltd., 9 FCC Rcd. 2288 (1994) ("Call-back Order"), aff'd on recon., 10 FCC Rcd 9590 (1995) ("Call-back Recon Order").

The regulator must explicitly requests assistance in enforcing such measures against carriers in the United States, and demonstrate that it cannot enforce such measures against these operators. The Commission may also consider whether the regulation or prohibition was created though a transparent and open legal process. Significantly, because call-back provided via the U.S. is a U.S. regulated service, this extra-territorial enforcement of foreign power is not only at odds with fundamental U.S. regulatory policy but also amounts to allowing a foreign nation to overrule U.S. law and transform an otherwise lawful U.S. service into an unlawful one. Presently, thirty-five nations have sent information to the Commission regarding the legal status of call-back in those countries. Of these, two have requested Commission assistance in enforcing their laws. FCC Public File Country List web page, http://www.fcc.gov/16/td/pf/callback.html. A copy of this page is attached as Attachment A to these comments.

Telecommunications Services ("WTO Agreement").<sup>4</sup> As a result of the commitments made in the WTO Agreement, a large number of countries have begun to open their markets to initial or increased competition, and more will do so during the next decade. Nonetheless, other nations are either not members of the WTO or have declined to make substantial – or any – market-opening commitments.

In this context, continuation of the Commission's policy of extra-territorial enforcement of foreign anti-call-back laws, even on grounds of promoting international comity, can no longer be justified. Continuation of this exemption to the Commission's basic policies discourages further liberalization of telecommunications markets now closed in whole or in part. The Commission should be particularly loathe to so discourage competition in those WTO member states that have declined to open their markets, but are now eligible to realize the benefits of open entry to the U.S. and other markets. As described further below, continuing to enforce foreign laws that prohibit callback using UCS would undermine the beneficial consequences of the WTO Agreement.

Accordingly, the Commission should explicitly refuse to enforce foreign laws that prohibit call-back. Alternatively, the Commission should refuse to enforce the anti-call-back laws of WTO member states (1) that are reneging on their commitments allowing call-back under the WTO, (2) where the PTT in the foreign market is partially owned by a U.S. carrier, or (3) where an anti-call-back law was promulgated without conforming to U.S. concepts of due process.

The result of the negotiations on telecommunications service are incorporated into the General Agreement on Trade in Service (GATS) by the Fourth Protocol to the GATS, April 30, 1996, 36 I.L.M. 566 (1997).

#### III. Argument

A. The FCC's Enforcement of Foreign Call-back Restrictions Undermines the Commission's Policy of Encouraging Competition Globally

The Commission's enforcement of foreign call-back restrictions undermines the Commission's policy of encouraging global competition in telecommunications services. The Commission has acknowledged that comity is a *discretionary* measure allowing it to take account of foreign sovereign acts;<sup>5</sup> thus, there is no requirement that the Commission assist in enforcing foreign anti-call-back laws. Before enforcing such laws, the Commission must find the public benefits of taking this discretionary action outweigh the benefits of adherence to the Commission's over-arching policy of promoting competition. Commission policy unequivocally favors the introduction and enhancement of competitive choices for callers in foreign countries,<sup>6</sup> but enforcing foreign governments' anti-call-back laws allows such governments to marshal the force of the Commission's enforcement power to reinforce their anti-competitive policies. That the offending U.S. carriers are merely providing a U.S.-based service and not a service within the foreign country only exacerbates this effect. While individual nations certainly have the right to apply their laws within their jurisdictions, the Commission should not assist in enforcement of anti-call-back laws that directly contradict U.S. policy.

Solution  $Call-back\ Recon\ Order\ at\ \P\ 47.$ 

Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97-142, Report and Order on Reconsideration (rel. Nov. 26, 1997) (effective February 9, 1998) ("Foreign Participation Order"), at ¶ 38.

Encouraging call-back services is a vital means to encourage competition in foreign markets that have not liberalized to permit U.S. companies to provide services within their market. Call-back effectively creates competitive choices in a foreign country through the use of a U.S.-originated service. When a caller in a foreign country has a call-back option, that person has the opportunity to exercise commercial choices and select the product that best fits its needs in terms of price, service quality, and other concerns. Because it can offer an alternative to the services provided in the foreign country, call-back should not be discouraged by the FCC.

Formally discontinuing the anomalous policy of helping foreign governments to enforce call-back restrictions will not only promote the continued availability of such competitive choices but also will bring greater stability to the business of call-back providers. The threat of FCC enforcement of foreign laws, even in countries that lack a tradition of open and transparent government, makes it difficult for a call-back provider to determine and evaluate the legal risks its service may incur. This uncertainty, in turn, makes it more difficult for call-back providers to raise the necessary financing to compete in the dynamic, often cost-intensive telecommunications marketplace. Faced with a choice of investing in a call-back company or another service with substantially less risk and uncertainty, investors may choose not to invest in call-back service providers or to impose a premium on their investment, thus impairing call-back operators' ability to compete in the global marketplace. This risk can also retard development of a competitive market even when *de jure* liberalization occurs, because the prior familiarity of end-users with competitive service providers is a major factor in the early establishment of successful new market competitors.

In short, the balance between promoting competition and international comity has changed due to the WTO Agreement. Whatever benefits the FCC's comity-based policy may have achieved

previously, it can no longer be deemed effective in the post-WTO world. Now that a multilateral framework for addressing conflicts is in place, the Commission should focus on consolidating the pro-competitive gains deriving from the WTO Agreement. Eliminating the inconsistent, discretionary policy of enforcing foreign call-back laws would constitute a substantial step in this direction.

- B. If the Commission Decides to Continue its Policy of Enforcing Foreign Laws
  Against Call-Back, it Should at Least Specify Certain Situations Where it Will Not
  Enforce Such Laws.
  - 1. The Commission should not enforce call-back prohibitions in countries that have effectively committed to allowing call-back under the WTO Agreement.

A number of countries that have committed to the WTO Agreement have, by the terms of their commitments, effectively agreed to allow call-back services. Under the WTO Agreement, countries commit to liberalize market entry under four modes of supply: cross-border supply, consumption abroad, commercial presence, and presence of natural persons. Countries that make general commitments to the WTO Agreement must allow all modes of supply in all service sectors unless they specifically limit their commitment in a particular mode or sector.<sup>7</sup>

Two of the modes of supply encompass the provision of call-back services. First, the WTO defines "cross-border supply" as "the possibility for non-resident service suppliers to supply service cross-border into the Member's territory." A common example is cellular roaming across a national border using foreign suppliers in conjunction with domestic partners. The provision of call-back

World Trade Organization. Guide to Reading the GATS Schedules of Specific Commitments and the Lists of Article II (MFN) Exceptions ("WTO Guide") (Released April 15, 1997) at 3.

<sup>&</sup>lt;sup>8</sup> WTO Guide, at 1.

services similarly constitutes the "cross-border supply" of services, as call-back services are provided by U.S. carriers "into" foreign nations. Second, the WTO defines consumption abroad as "the freedom for the Member's residents to purchase services in the territory of another Member." Thus, a U.S. resident may purchase telecommunications services in another Member state. Generally, under call-back, a resident of the U.S. or a third country purchases telecommunications service offered to her by a U.S. call-back operator. Unless a WTO Member's commitments specifically preclude call-back as a service that the U.S. resident can use, residents of the U.S. or a third country have the right to use call-back services in WTO Member states that made commitments to allow "consumption abroad."

Moreover, even those countries that have not committed to allowing immediate competition to a monopoly service provider effectively have committed to allowing all forms of call-back, so long as they did not specifically preclude call-back services in their commitment. The FCC has recognized that call-back using UCS is only a means for foreign customers (or U.S. customers

Like mobile roaming, the service is partly provided by the domestic carrier. *See also*, http://www.wto.org/about/agmnts5.htm. A copy of this document is attached as Attachment B of this document.

WTO Guide, at 1.

Some member states explicitly disallowed call-back in their WTO commitments. Those that, in contrast, made international commitments without such an explicit prohibition on call-back services should not be given U.S. recognition of, much less support for, their inconsistent assertion that call-back is nonetheless illegal. Such an action would make a mockery of the WTO Agreement. This result is particularly so because the remedy for a country's refusal to honor its WTO commitments, once adjudicated, is the ability of the complaining nation to retaliate in other sectors, not an order directing compliance. The FCC's refusal to enforce such inconsistent foreign laws at least minimizes this harmful consequence.

abroad) to access services of U.S. carriers across national boundaries.<sup>12</sup> Regardless of how it is provided, call-back service uses the network of the carrier in the foreign country, which is paid to terminate the "call-back" and in some cases to provide the originating "access" for the call. Where a Member state required telephone traffic to use a monopoly network, that requirement does not, absent explicit WTO declaration, override the country's commitments to allow cross-border supply and the consumption abroad so as to preclude the provision of call-back services by U.S. carriers.

Regardless of whether call-back prohibitions in such countries violate their WTO commitments, the FCC should not assist foreign markets to enforce these laws. Rather, the Commission can assist in the enforcement of the WTO Agreement by refusing to honor requests from member states that are disavowing their international commitments.

2. The Commission should also discontinue its comity-based policy of enforcing foreign call-back laws in nations where the incumbent PTT has investment from a U.S. carrier.

Nor does international comity require the Commission to enforce laws that protect foreign carriers with partial U.S. ownership. U.S. carriers investing in former government- controlled, dominant telecommunications carriers, or should not be encouraged by U.S. government support to thwart further liberalization and ensure monopoly profits in the foreign market. The U.S. should promote the export of competition, not the export of anti-competitive behavior. Rather than enforcing anti-competitive foreign laws in the U.S., it should enforce its U.S. competition requirements against U.S. carriers acting anti-competitively with or through affiliates abroad.

Specifically, the Commission has repeatedly affirmed its ability to enforce its laws and

Call-back Recon Order at ¶ 38, n.55.

policies against foreign carriers where the carrier has an investment by a U.S. carrier.<sup>13</sup> Carriers that are subject to FCC jurisdiction cannot act in a foreign market in a manner that has a negative impact on an international route on which it has market power. Yet, the Commission's current policy perversely allows a U.S. carrier to invest abroad and then have its affiliates ask the Commission to enforce anti-call-back laws to preclude competition on the route. The Commission's policy of enforcing the laws of foreign governments thus assists these carriers in competing unfairly. As a result of this policy, while one U.S. carrier obtains monopoly profits in a destination country, U.S. call-back and other companies are shut out, often resulting in market distortion. To enhance or protect competition, the FCC should announce that it will not, under any circumstances, enforce foreign laws that protect U.S. carrier investors in foreign monopolies.<sup>14</sup>

3. The Commission Should Decline Enforcement of Foreign Anti-Call-Back Laws of Countries That Do Not Adhere to U.S. Standards of Due Process.

The Commission has substantial discretion in applying its comity-based call-back policy. 

The Commission should use this discretion to forbear, or continue to forbear, from enforcing foreign

See, e.g., Atlantic Tele-Network, Inc., 8 FCC Rcd. 4776, at ¶ 14 (upholding competitive safeguards imposed on ATN's international Section 214 authority because of ATN's investment in Guyana Telephone and Telegraph ("GT&T") and alleged anti-competitive behavior by GT&T); Market Entry and Regulation of Foreign-affiliated Entities, IB Docket No. 95-22, Report and Order, ("Market Entry Order") (rel. Nov. 30, 1995) at ¶ 190. The Commission can also impose additional pro-competitive conditions on Section 214 authorizations and in approving foreign affiliations.

While the WTO Agreement does not preclude greater restrictions on U.S.-based carriers under U.S. laws, a more even handed policy could, of course, be to discontinue completely the discretionary enforcement of foreign laws.

Call-back Recon Order, at ¶ 50, n.80.

laws in countries that do not comply with our standards of due process.<sup>16</sup> In any event, the FCC should formally announce that a demonstration of adequate due process in establishing a call-back prohibition is a specific prerequisite to FCC enforcement of foreign call-back restrictions. Otherwise, nations that offer no notice, no opportunity for comment, and no transparency can enact laws prohibiting call-back, without providing affected parties with any due process, and nonetheless expect FCC enforcement assistance. Discretionary enforcement in the U.S. of laws offending our standards of due process and often the legal requirements of the country itself cannot be deemed appropriate.

#### IV. Conclusion

Much has changed since the Commission first adopted its international call-back policy and agreed to assist in the enforcement of foreign prohibitions on call-back. Most significantly, a procompetitive multilateral framework for the provision of basic telecommunications services is now in place. Given these changes, the Commission should grant the petition of the TRA, open the rulemaking sought, and cease enforcing foreign restrictions on call-back. Such a rulemaking will promote the Commission's pro-competition policy, and also promote advancement of the goals of the WTO Agreement.

Even if the Commission feels that the outright elimination of its call-back policy is not warranted at this time, then at least the Commission should not enforce foreign laws that are inconsistent with the jurisdiction's WTO commitments, when it involves nations in which a foreign

The Commission may, in fact, consider this factor as part of its review of the material submitted by foreign countries.

PTT is partially owned by a U.S.-carrier, or when the American standards of due process are not met.

For the foregoing reasons, Ursus Telecom Corporation respectfully requests that the Commission grant the petition of the Telecommunications Resellers Association and initiate a rulemaking to rescind the Commission's policy of enforcing foreign call-back restrictions.

Respectfully Submitted,

URSUS TELECOM CORPORATION

Bv:

Helen E. Disenhaus

Adam L. Kupetsky

Swidler & Berlin, Chartered 3000 K Street, N.W., Suite 300

Washington, D.C. 20007-5116

(202) 424-7500

Its Counsel

May 1, 1998

# ATTACHMENT A

# FC Federal Communications Commission

November 7, 1997 (Last Updated April 16, 1998 jrm)

# CALL-BACK SERVICES

On June 15, 1995, the Federal Communications Commission issued an decision (FCC 95-224) which confirmed that call-back using uncompleted call signalling violates neither U.S. domestic nor international law. The decision provided, however, that U.S. call-back providers are not authorized to provide service to customers in countries which expressly have declared it to be illegal. To facilitate U.S. carrier compliance with this provision, the Commission stated that it would be prepared to receive documentation from any government which seeks to put U.S. carriers on notice that call-back using uncompleted call signalling has been declared expressly illegal in its territory.

The International Bureau maintains a public information file for such submissions. This public file is designated as "International Call-Back: Foreign Law," and is located in the International Bureau's public reference room, at 2000 M Street, N.W., Room 102, Washington, D.C. 20554. The public file and list of countries are for informational purposes only. Inclusion in the public file does not constitute Commission judgment on the issue of whether a submission by a foreign government would be valid evidence of illegality in a Commission proceeding.

This page has been updated on June 16 1997 to inform the public that the public file now contains a November 1996 ITU survey with information on international call-back policy in 67 countries.

In addition, the following countries have been added to the public file:

#### Bahrain, Cook Islands, Kuwait, Panama, Qatar, United Arab Emirates

#### FCC PUBLIC FILE COUNTRY LIST

- The Bahamas
- Bahrain
- Bolivia
- China
- Colombia
- Cook Islands
- Costa Rica
- Croatia
- Cyprus
- Ecuador

Call-Back Services Page 2 of 4

- Egypt
- Honduras
- Hungary
- India
- Indonesia
- Kuwait
- Latvia
- Lebanon
- Malaysia
- Netherlands Antilles
- Oman
- Panama
- Peru
- Philippines\*
- Portugal
- Qatar
- Saudi Arabia\*
- Seychelles
- South Africa
- Syria
- Tanzania
- Thailand
- United Arab Emirates
- Uruguay
- Venezuela

<sup>\*</sup> The Commission's order also provides that governments unable to enforce their domestic

Call-Back Services Page 3 of 4

prohibitions on call-back may obtain assistance in this matter from the FCC by submitting a copy of legislation that specifically bans call-back, the name and address of the specific U.S. provider which allegedly provides call-back illegally, specific evidence that there are violations of their domestic prohibition, and evidence that unsuccessful enforcement measures have been undertaken. The Commission has received submissions to this effect from these countries.

List of countries that stated call-back is illegal in a November 1996 ITU survey of 67 countries

- Algeria
- Bahamas
- Bahrain
- Belarus
- Brunei Darussalam
- Burkina Faso
- Burundi
- Cambodia
- China
- Columbia
- Cyprus
- Djibouti
- Ecuador
- Egypt
- Eritrea
- Fiji
- Gambia
- Ghana
- Greece
- Honduras
- Hungary
- India
- Kazakstan
- Kenya
- Republic of Korea
- Kuwait
- Kyrgyzstan
- Latvia
- Malaysia
- Mali
- Morocco
- Netherland Antilles
- Nicaragua
- Niger
- Oman
- Pakistan
- Panama
- Papua New Guinea
- Philippines
- Poland
- Portugal
- Qatar
- Saudia Arabia
- South Korea
- Spain
- Svria
- Tanzania

Call-Back Services Page 4 of 4

- Thailand
- Turkey
- Uganda
- United Arab Emirates
- Venezuela
- Vietnam
- Western Samoa
- Yemen
- Zambia
- Zimbabwe

For further information, you may contact Jeanne Gellman at (202) 418-0743. Copies of the information may be obtained from the Commission's contractor for public service records duplication: ITS, Inc. 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800.



International Home Page

# ATTACHMENT B



#### **Trade Topics:**



#### Resources:

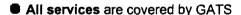
# Services - rules for growth and investment

The General Agreement on Trade in Services (GATS) is the first ever set of multilateral, legally-enforceable rules covering international trade in services. It was negotiated in the Uruguay Round. Like the agreements on goods, GATS operates on three levels: the main text containing general principles and obligations; annexes dealing with rules for specific sectors; and individual countries' specific commitments to provide access to their markets. Unlike in goods, GATS has a fourth special element: lists showing where countries are temporarily not applying the "most-favoured-nation" principle of non-discrimination. These commitments - like tariff schedules under GATT - are an integral part of the agreement. So are the temporary withdrawals of most-favoured-nation treatment.

A WTO <u>Council for Trade in Services</u> oversees the operation of the agreement. Negotiations on commitments in four topics have taken place after the Uruguay Round. A full new services round will start no later than 2000.

# The framework: the GATS articles

# **Basic principles**



- Most-favoured-nation treatment applies to all services, except the one-off temporary exemptions
- National treatment applies in the areas where commitments are made
- Transparency in regulations, inquiry points
- Regulations have to be objective and reasonable
- International payments: normally unrestricted
- Individual countries' commitments: negotiated and bound
- Progressive liberalization: through further negotiations

GATS's 29 articles cover all services sectors. They contain the general obligations that all members have to apply. (See also Principles of the trading system.):

# Total coverage

The agreement covers all internationally-traded services. This includes all the different ways of providing an international service - GATS defines four:

- services supplied from one country to another (e.g. international telephone calls), officially known as "cross-border supply"
- consumers or firms making use of a service in another country (e.g.

tourism), officially known as "consumption abroad"

- a foreign company setting up subsidiaries or branches to provide services in another country (e.g. foreign banks setting up operations in a country), officially "commercial presence"
- individuals travelling from their own country to supply services in another (e.g. fashion models or consultants), officially "presence of natural persons"

#### Most-favoured-nation (MFN) treatment

Favour one, favour all. <u>MFN</u> means treating one's trading partners equally. Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all other WTO members. (This applies even if the country has made no specific commitment to provide foreign companies access to its markets under the WTO.)

MFN applies to all services, but some special temporary exemptions have been allowed (see below).

#### What about national treatment?

National treatment - equal treatment for foreigners and one's own nationals - is treated differently for services. For goods (GATT) and intellectual property (TRIPS) it is a general principle. In GATS it only applies where a country has made a specific commitment, and exemptions are allowed. (See below.)

#### **Transparency**

GATS says governments must publish all relevant laws and regulations. Within two years (by the end of 1997) they have to set up inquiry points within their bureaucracies. Foreign companies and governments can then use these inquiry points to obtain information about regulations in any service sector. And they have to notify the WTO of any changes in regulations that apply to the services that come under specific commitments.

#### Regulations: objective and reasonable

Since domestic regulations are the most significant means of exercising influence or control over services trade, the agreement says governments should regulate services reasonably, objectively and impartially. When a government makes an administrative decisions that affect a service, it should also provide an impartial means for reviewing the decision (for example a tribunal).

#### Recognition

When two (or more) governments have agreements recognizing each other's qualifications (for example, the licensing or certification of service suppliers), GATS says other members must also be given a chance to negotiate comparable pacts. The recognition of other countries' qualifications must not be discriminatory, and it must not amount to protectionism in disguise. These recognition agreements have to be notified to the WTO.

#### International payments and transfers

Once a government has made a commitment to open a service sector to foreign competition, it must not normally restrict money being transferred out of the

country as payment for services supplied ("current transactions") in that sector. The only exception is when there are balance-of-payments difficulties, and even then the restrictions must be temporary and subject to other limits and conditions.

#### Specific commitments

Individual countries' commitments to open markets in specific sectors - and how open those markets will be - are the outcome of negotiations. The commitments appear in "schedules" that list the sectors being opened, the extent of market access being given in those sectors (e.g. whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies.)

These commitments are <u>"bound"</u>: like bound tariffs, they can only be modified or withdrawn after negotiations with affected countries - which would probably lead to compensation. Because "unbinding" is difficult, the commitments are virtually guaranteed conditions for foreign exporters and importers of services and investors in the sector to do business.

#### Progressive liberalization

The Uruguay Round was only the beginning. GATS requires more negotiations, the first to begin within five years. The goal is to take the liberalization process further by increasing the level of commitments in schedules.

#### The annexes: services are not all the same

International trade in goods is a relatively simple idea to grasp: a product is transported from one country to another. Trade in services is much more diverse. Telephone companies, banks, airlines and accountancy firms provide their services in quite different ways. The GATS annexes reflect some of the diversity.

#### Movement of natural persons

This annex deals with negotiations on individuals' rights to stay temporarily in a country for the purpose of providing a service. It specifies that the agreement does not apply to people seeking permanent employment or to conditions for obtaining citizenship, permanent residence or permanent employment.

#### Financial services

Instability in the banking system affects the whole economy. The financial services annex says governments have the right to take prudential measures, such as those for the protection of investors, depositors and insurance policy holders, and to ensure the integrity and stability of the financial system. It also excludes from the agreement services provided when a government exercising its authority over the financial system, for example central banks' services. Negotiations on specific commitments in financial services continued after the end of the Uruguay Round and ended in late 1997.

#### **Telecommunications**

The telecommunications sector has a dual role: it is a distinct sector of economic activity; and it is an underlying means of supplying other economic activities

3 of 7 04/21/98 20:09:08

(for example electronic money transfers). The annex says governments must ensure that foreign service suppliers are given access to the public telecommunications networks without discrimination. Negotiations on specific commitments in telecommunications resumed after the end of the Uruguay Round. This led to a new liberalization package agreed in February 1997.

#### Air transport services

Under this annex, traffic rights and directly related activities are excluded from GATS's coverage. They are handled by other bilateral agreements. However, the annex establishes that the GATS will apply to aircraft repair and maintenance services, marketing of air transport services and computer-reservation services.

#### Countries' commitments: on market-opening

Each country lists specific commitments on service sectors and on activities within those sectors. The commitments guarantee access to the country's market in the listed sectors, and they spell out any limitations on market access and national treatment.

As an example; if a government commits itself to allow foreign banks to operate in its domestic market, that is a market access commitment. And if the government limits the number of licences it will issue, then that is a market access limitation. If it also says foreign banks are only allowed one branch while domestic banks are allowed numerous branches, that is an exception to the national treatment principle.

#### Market access

The lists of market access commitments (along with any limitations and exemptions from national treatment) are negotiated as multilateral packages, although bilateral bargaining sessions are needed to develop the packages. The commitments therefore contain the negotiated and guaranteed conditions for conducting international trade in services. If a recorded condition is to be changed for the worse, then the government has to give at least three months' notice and it has to negotiate compensation with affected countries. But the commitments can be improved at any time. They will be subject to further liberalization through the future negotiations already committed under GATS. The first of these must start no later than 2000.

#### National treatment

National treatment means treating one's own nationals and foreigners equally. In services, it means that once a foreign company has been allowed to supply a service in one's country there should be no discrimination between the foreign and local companies.

Under GATS, a country only has to apply this principle when it has made a specific commitment to provide foreigners access to its services market. It does not have to apply national treatment in sectors where it has made no commitment. Even in the commitments, GATS does allow some limits on national treatment.

This contrasts with the way the national treatment principle is applied for goods - in that case, once a product has crossed a border and been cleared by customs it has to be given national treatment even if the importing country has not made

any commitment under the WTO to bind the tariff rate.

#### MFN exemptions: temporary and one-off

WTO members have also made separate lists of exceptions to the MFN principle of non-discrimination. When GATS came into force, a number of countries already had preferential agreements in services that they had signed with trading partners, either bilaterally or in small groups. WTO members felt it was necessary to maintain these preferences temporarily. They gave themselves the right to continue giving more favourable treatment to particular countries in particular service activities by listing "MFN exemptions" alongside their first sets of commitments. In order to protect the general MFN principle, the exemptions could only be made once; nothing can be added to the lists. They will be reviewed after five years (in 2000), and will normally last no more than 10 years. The exemption lists are also part of the GATS agreement.

### On-going work: even before the next round

At the end of the Uruguay Round governments agreed to continue negotiations in four areas: basic telecommunications, maritime transport, movement of natural persons, and financial services. Some commitments in some of these sectors had been made in the Uruguay Round agreements. The objective of continuing with the negotiations was to improve the package.

#### **Basic telecommunications**

This was an area where governments did not offer commitments during the Uruguay Round \_ essentially because the privatization of government monopolies was a complex issues in many countries. Sophisticated value-added telecommunications services, which are more commonly provided on a private basis, were, however, included in many of the original GATS schedules. The negotiations on basic telecommunications ended in February 1997 with new national commitments due to take effect from January 1998.

#### Maritime transport

Maritime transport negotiations were originally scheduled to end in June 1996, but participants failed to agree on a package of commitments. The talks will resume with the new services round due to start no later than 2000. Some commitments are already included in some countries' schedules covering the three main areas in this sector: access to and use of port facilities; auxiliary services; and ocean transport.

#### Movement of natural persons

"Movement of natural persons" refers to the entry and temporary stay of persons for the purpose of providing a service. It does not relate to persons seeking permanent employment or permanent residence in a country. Some commitments are already included in the schedules but it was agreed that negotiations to improve commitments would take place in the six months after the WTO came into force. These only achieved modest results.

#### Financial services

After the Uruguay Round

GATS talks that resumed after the round. A full new services round will start in 2000 at the latest.

**Basic telecommunications** completed February 1997

Financial services to end late 1997

Maritime transport suspended

**Movement of natural persons** completed July 1995

Other issues for future negotiation: subsidies, government procurement, safeguards, qualifications, technical standards, licensing

Financial services is another area licensing where further negotiations were scheduled to improve on the commitments included in the initial Uruguay Round schedules. Officially the first set of talks ended in July 1995, but the governments decided that more could be achieved if further talks could be held. These latest negotiations ended in December 1997.

#### Other issues

GATS identifies several more issues for future negotiation. One set of negotiations would create rules that are not yet included in GATS: rules dealing with <u>subsidies</u>, government procurement and <u>safeguard measures</u>.

Another set of negotiations would seek rules on the requirements foreign service providers have to meet in order to operate in a market. The objective is to prevent these requirements being used as unnecessary barriers to trade. The focus is on: qualification requirements and procedures, technical standards and licensing requirements.

As part of this task, a working party on professional services has been set up. It is tackling the accountancy sector first, a priority set by ministers, but eventually all professional services should be covered. The first result of these discussions emerged in May 1997 when the Services Council adopted new guidelines for countries to use when negotiating agreements to recognize each others' professional qualifications in accountancy. The guidelines are not binding.



Agreements menu Main menu

Last updated: 2 February 1997

VTO Home About the WTC	100 36	1 1	T			
VICIHOMEI About the WIC	I Nife Man	l Seatch	i Kegistration	i Brancaic i Ber	าว	
VIO IIOMO ZIDOUL ME WILC	DICC IVIOR	Domon	INVERSIGNATION	TIMICAIS ILSE	254	

